

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION**

**THE BANK OF NEW YORK MELLON §
TRUST CO, N.A., AS TRUSTEE FOR ACE §
SECURITIES CORP. HOME EQUITY §
LOAN TRUST, SERIES 2003-NCI, ASSET §
BACKED PASS-THROUGH §
CERTIFICATES, §**

Plaintiff, §

v. §

**MICHAEL LYNN SIMS, SR., *et al.*, §
Defendants. §**

CIVIL ACTION NO: 1:14-CV-453

**ORDER GRANTING MOTION FOR DEFAULT JUDGMENT
AND ENTERING PARTIAL JUDGMENT**

Pursuant to 28 U.S.C. § 636(b) and the Local Rules for the United States District Court, Eastern District of Texas, the Court referred this proceeding to United States Magistrate Judge Keith F. Giblin for pretrial management. On October 26, 2015, Judge Giblin issued his Report and Recommendation on plaintiff The Bank of New York Mellon's pending motion for default judgment filed against defendants Michael Lynn Sims, Sr., Kenneth Max Putnam, and Anthony R. Sims. Judge Giblin recommended that this District Court grant the plaintiff's request and enter a judgment of foreclosure against those defendants. *See Motion for Default Judgment* [Doc. #18]; *Report and Recommendation* [Doc. #21].

The defendants received the report via certified mail, return receipt requested [Doc. #22, #23, #24]. They have not appeared in this case to date or filed objections to the magistrate judge's report.

Having considered the plaintiff's request for default judgment and Judge Giblin's findings and recommendation, the Court **ORDERS** that the Report and Recommendation on Motion for Default Judgment [Doc. #21] is **ADOPTED**. Pursuant to the magistrate judge's recommendation,

the Court further **ORDERS** that the motion for default judgment [Doc. #18] is **GRANTED**.

Accordingly, the Court **ORDERS** that judgment is entered in favor of the plaintiff The Bank of New York Mellon Trust Company, N.A., as Trustee for Ace Securities Corp., Home Equity Loan Trust, Series 2003-NC1, Asset Backed Pass-Through Certificates, and against defendants Michael Lynn Sims, Sr., Kenneth Max Putnam, and Anthony R. Sims. Having fully considered the plaintiffs' claims against them, those parties are **TERMINATED** as active defendants. Finally, the Court **FINDS, ORDERS and ADJUDGES** as follows, as requested in the motion for default judgment:

An event of default has occurred on the certain Texas Home Equity Note executed on or about June 11, 2003, by Anthony R. Sims and Patsy C. Sims, payable to New Century Mortgage Corporation ("Note"). The Court further finds that the Note, recorded as instrument number 2003009137 in the real property records of Liberty County, Texas ("Security Instrument"), provides the plaintiff Bank of New York Mellon, as the current owner and holder of the Note and mortgagee of the Security Instrument, in the event of a default on the obligations on the Note, with a first lien security instrument on that certain real property commonly known as 807 Charles Barker Avenue, Cleveland, Texas, 77327 ("Property") and more particularly described as:

ALL that certain tract or parcel of land in the James McCoy Survey, Abstract No. 310, Liberty County, Texas, containing .2772 acres, more or less, being out of and part of a 34.927 acre tract described in Deed from Kirby Lumber Corporation to the Cleveland Independent School District, dated March 31, 1972, recorded in Volume 694, Page 681, et seq. of the Deed Records of Liberty County, Texas, said .2772 acres being more particularly described as follows, to-wit:

BEGINNING at a 1/2" iron rod stake set in the East margin of Legion Avenue, North 00° 17' 30" East 373 feet and South 89° 43' 30" East 30.0 feet from a concrete monument found for the Southwest Corner of the said 34 927 acres for the Southwest and beginning corner of the tract herein described;

THENCE North 00° 17' 30" East 105.0 feet to a 1/2" iron rod stake set in East margin of Legion Avenue for the Northwest corner of this tract;

THENCE South 89° 43' 30" East 115.0 feet to a 1/2" iron rod stake set for the

Northeast corner of this tract;

THENCE South 00° 17' 30" West 105.0 feet to a 1/2" iron rod stake set for the Southeast corner of this tract;

THENCE North 89° 43' 30" West 115.0 feet to the PLACE OF BEGINNING, containing .2772 acres, more or less.

It is further **ORDERED** that the following are secured by the Security Instrument on the Property: the outstanding balance of the Note, which is at least \$63,687.50 as of August 14, 2015 (the date the motion for default judgment); pre-judgment interest; post-judgment interest calculated at the applicable rate for the date of this order as provided by 28 U.S.C. § 1961(a); attorney fees; and costs of court. It is further,

ORDERED that due to the event of default on the Note, the Security Instrument is foreclosed and the plaintiff Bank of New York Mellon, or its successors or assigns, may enforce its Security Instrument against the Property through non-judicial foreclosure as provided in the Security Instrument and Texas Property Code §51.002, or, alternatively, through judicial foreclosure. It is further **ORDERED** that should Plaintiff elect a judicial foreclosure, an order of sale shall issue to any federal marshal, sheriff or constable, directing him or her to seize and sell the Property, and the improvements located thereon, as under execution and satisfaction of this judgment. It is further **ORDERED** that Plaintiff may further communicate with Anthony R. Sims, Kenneth Max Putnam, Michael Lynn Sims, Sr. and all third parties reasonably necessary to conduct the foreclosure sale. It is further **ORDERED** that all foreclosure notices shall be mailed to the defendants at their last known addresses as stated below:

to Defendant Anthony R. Sims at 19555 State Route 41, Peebles, Ohio 45660;

to Defendant Kenneth Max Putnam at 409 Constellation Drive, TDCJ Prison Complex, Beeville, Texas 78104, and

to Defendant Michael Lynn Sims, Sr. at 423 West Mizell Lane, Cleveland, Texas 77328.

The claims asserted by the Bank of New York Mellon against the remaining defendant unknown heirs remain pending at this time.

So ordered and signed on

Nov 24, 2015

A handwritten signature in black ink, appearing to read "Ron Clark", written in a cursive style.

Ron Clark, United States District Judge